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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

A.J. et al.,
Petitioners,

v.

THE SUPERIOR COURT OF CONTRA
COSTA COUNTY,

Respondent;

CONTRA COSTA COUNTY
CHILDREN AND FAMILY SERVICES
BUREAU,

Real Party in Interest.

A155452

(Contra Costa County
Super. Ct. No. J1701286)

J.D. (mother) and A.J. (father) have each filed a writ petition challenging a juvenile court order terminating their reunification services and setting a section 366.26 hearing to determine whether their parental rights should be terminated. (Welf. & Inst. Code, § 366.26.)¹ Mother claims that she did not receive reasonable reunification services and that services should have been extended. Father contends that the record does not support the juvenile court's findings that he failed to make progress toward achieving the goals of his case plan and there was no probability that the parties' son J.J. could be returned home if services were extended. Having thoroughly reviewed the

¹ All further unspecified statutory references are to the Welfare and Institutions Code.

record, we conclude the juvenile court's findings are supported by law and the record. Accordingly, we deny the petitions.

FACTUAL & PROCEDURAL BACKGROUND

A. Jurisdictional & Dispositional Proceedings

On December 12, 2017, the Contra Costa County Children and Family Services Bureau (Bureau) filed a juvenile dependency petition, alleging newborn J.J. came within section 300, subdivision (b)(1) (failure to protect) because mother tested positive for cocaine and marijuana at J.J.'s birth. The court held a detention hearing the following day. In preparation for the impending jurisdictional hearing, the Bureau submitted a report detailing mother's prior substance abuse and history of domestic violence at the hands of father. The jurisdictional report recommended mother complete parenting classes, drug testing, and a drug treatment program. The juvenile court reviewed the report, and at the conclusion of the hearing, it determined that J.J. was a person described in section 300, placed J.J. in the Bureau's custody, and adopted the report's recommendations for mother. The court also ordered a paternity test for father. On February 14, 2018, the court found father was J.J.'s biological father.

The Bureau submitted its disposition report in February 2018. The report noted that mother began using cigarettes, marijuana, and ecstasy around 2006 to cope with the death of her first child. Mother had a second child in 2007 and became sober before having a third child in 2009 and a fourth child in 2011. In 2011, mother struggled once again with addiction and decided to allow her grandmother (great-grandmother) to become the guardian of her children. The following year, mother was kidnapped, became a participant in the human trafficking trade and was forced to use methamphetamine and cocaine. Mother continued to abuse cocaine after her kidnapping and never resumed parenting her two eldest children.

The report further explained that mother and father became "serious" five years after they rekindled their childhood friendship in 2010. Mother described her relationship with father as "great" but admitted to picking fights with father after binges. In contrast, great-grandmother described father as a controlling and intimidating man

who had assaulted mother in the past year and sold marijuana and cocaine. Mother informed the Bureau that she realized she was pregnant with father's child, J.J., three to four months into her pregnancy. She admitted to using marijuana and alcohol while pregnant with J.J. but claimed she no longer used cocaine. After giving birth and at the Bureau's request, she entered an inpatient substance abuse program. Mother also informed the Bureau that she was interested in receiving mental health counseling and expressed her willingness to complete domestic violence and parenting classes.

Regarding father, the report noted he was willing to take parenting classes but was unwilling to submit to drug testing because, as he explained, he used marijuana to help him sleep and treat ulcers. Father denied ever hitting a woman but claimed mother needed help with domestic violence. The report's proposed case plan suggested that parents' reunification services include couples counseling for domestic violence, parenting classes, drug testing, and, as needed, drug treatment.

At the conclusion of the disposition hearing, the court adopted the Bureau's findings and recommendations and ordered both parents to comply with the Bureau's case plan, which included anger management counseling, parenting classes and drug testing for both parents. The court further ordered J.J. to remain under the Bureau's care.

B. Six-month Status Review

Parents' six-month status review was scheduled for September 2018. The Bureau submitted its report in advance of the hearing. The report indicated that while mother had made some progress toward achieving the goals set forth in her case plan, her progress was, at best, inconsistent—punctuated by her failure to consistently communicate with her social worker. The report acknowledged mother's successful completion of and graduation from an inpatient substance abuse program and noted that mother was in compliance with some aspects of her case plan, which included regular contact with the Bureau during inpatient treatment and a couples counseling program with a domestic violence prevention component.

However, the report also noted that beginning in May 2018, mother failed to make any progress regarding the objectives of her case plan. For example, mother had no

contact, as required by her case plan, with the Bureau from May to July 2018. During this period, mother failed to return calls from the Bureau or show up to scheduled meetings. In addition, mother's case plan called for mother to obtain stable housing. Upon mother's completion of the inpatient drug program, the Bureau understood that mother was living with great-grandmother. However, the Bureau's social worker learned, upon making a surprise visit to great-grandmother's residence, that mother only stayed at great-grandmother's residence weekly when visiting J.J. Great-grandmother also informed the social worker that she believed mother lived with father in his car.

When mother finally contacted the Bureau in July, she explained she had failed to maintain contact because she was unable to secure stable housing and felt overwhelmed. Mother also stated that she was unable to participate in drug counseling and testing during her hiatus because she lost her driver's license. Mother never provided any information regarding her efforts to obtain assistance from the DMV to obtain a temporary or duplicate license. To help mother secure housing, the Bureau wrote a letter to the Vallejo Housing Authority on her behalf.

Regarding father's progress, the report concluded father failed to make sufficient progress to regain custody of J.J. While father attended couples counseling, of significance to the Bureau was father's adamant denial of a substance abuse problem and refusal to submit to drug testing. Father submitted one drug test in April 2018, which was positive for marijuana. The Bureau met with father to discuss his refusal to drug test on several occasions during the six-month review period, and, during these meetings, father maintained his position that he "should not have to do '*any of this*' " because he was "not the reason his son was removed from his care." Because father failed to acknowledge his drug issues, the Bureau felt it inappropriate to grant father unsupervised or extended visitation privileges with J.J.

Mother and father requested a contested status review hearing. At the hearing, father's counsel argued that father's completion of a parenting class reflected substantial progress toward completion of the case plan, warranting an extension of services. Father's counsel asked the court to excuse father's lack of drug testing because father

found it difficult to deal with the testing regimen as he worked two jobs. Counsel informed the court that father now had time to drug test because he had completed the parenting class and counseling.

Mother's counsel cited mother's early success, reflected by her completion of the inpatient drug program, but acknowledged mother "hit a usual block" after leaving that program. Counsel for mother asked the court to extend mother's reunification services for an additional six months in light of mother's request, three weeks before the six-month review hearing, to re-enroll in another inpatient drug program.

County counsel, joined by counsel for the minor, requested that the juvenile court terminate parents' services and set a section 366.26 hearing given their lack of progress toward achieving the goals of the case plan. Each counsel cited mother's failure to participate in any drug testing after completing the inpatient program and father's failure to participate in drug testing. As county counsel observed, with respect to both parents, substance abuse and the failure to test were the biggest issues impacting parents' ability to reunify J.J.'s family.

At the conclusion of the hearing, the court determined the parents had been offered and/or provided with reasonable services; that given parents' failure to comply with the case plan, J.J. would be at substantial risk of harm if returned to his parents; and termination of reunifications service was appropriate. The court expressed disappointment with the case because mother started out "working very hard" only to "unravel." The court explained that parents' failure to comply with drug counseling and drug testing on a consistent basis was especially concerning because the petition to remove J.J. from his parents' care was based on substance abuse, which often fueled domestic violence, like the incidents in J.J.'s family's past. The court then found by clear and convincing evidence that the parents "failed to make any regular and substantive progress in their treatment plan." The court set a 366.26 hearing for January 9, 2019.

DISCUSSION

Mother's Claims

A. Reasonable services were provided.

Mother contends the Bureau failed to provide her with reasonable services. Specifically, mother claims she did not receive mental health services after telling the Bureau about her depression due to the loss of her first child and her willingness to receive mental health treatment. In addition, mother claims the Bureau did not assist her in her search to find housing after she informed the Bureau in July 2018 that she had been unable to secure housing.

When a child is removed from a parent's custody, the court ordinarily must order child welfare services for the parent to facilitate reunification of the family. (§ 361.5, subd. (a); *Tonya M. v. Superior Court* (2007) 42 Cal.4th 836, 843.) The agency or bureau charged with child welfare services must “ ‘make a good faith effort to develop and implement a family reunification plan . . . [with] the objective of providing such services . . . “as will lead to the resumption of a normal family relationship.” ’ ” (*In re Jasmon O.* (1994) 8 Cal.4th 398, 424.) After six months, the court must decide whether a parent has been provided or offered “reasonable services . . . designed to aid the parent or legal guardian in overcoming the problems that led to the initial removal and the continued custody of the child” (§ 366.21, subd. (e)(8).) A parent is only entitled to reasonable, not optimal, services. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 547.)

Here, the Bureau initially placed mother into an inpatient substance abuse treatment program to help with her substance abuse, which began after the loss of her first child. The Bureau initially determined that mother's drug abuse was interrelated with her depression. Mother completed the program, and received a certificate in navigating the child welfare system. Mother also attended classes in alcohol and drug education, parenting education, anger management training, tobacco cessation, and recovery treatment during her enrollment in the program. After mother completed the inpatient program, the Bureau provided her with couples counseling that included a

domestic violence component. In short, the Bureau provided services targeted to alleviate the issues that led to the court's exercise of dependency jurisdiction over J.J.

Mother's assertion that the Bureau failed to provide her with specialized mental health services is belied by the record. On the contrary, the record reflects that mother failed to inform the Bureau that the counseling services provided were insufficient to address her depression and then ceased all communication with the Bureau—resulting in the Bureau's inability to provide her with services. When the Bureau was able to find mother, she reported only that she was overwhelmed with looking for housing after the Bureau finally tracked her down. The Bureau then wrote a letter to the Vallejo Housing Authority on mother's behalf.

We also find mother's reliance on *Patricia W. v. Superior Court* (2016) 244 Cal.App.4th 397 (*Patricia W.*), in support of her argument that the Bureau failed to provide reasonable mental health services, misplaced. In *Patricia W.*, the petitioner's children were removed from her care after she had multiple schizophrenic episodes. (*Id.* at p. 401.) Although the agency charged with reunification secured two mental health evaluations and sought professional input to address mother's health, the agency failed to obtain a proper diagnosis of mother's mental illness, let alone corresponding treatment. (*Id.* at pp. 422–424.) The court held that “the Agency was required, first, to identify mother's mental health issues and provide services designed to enable her to obtain appropriate medication and treatment that would allow her to safely parent [her child].” (*Id.* at p. 422.)

In contrast to *Patricia W.*, the Bureau provided mother with services, as discussed above, to address the depression she experienced due to the loss of her first child. The Bureau referred mother to an inpatient drug treatment program, which included components tailored to address mother's use of drugs to assuage her grief. The inpatient program also provided her with couples counseling to help father and her be better parents to J.J. *Patricia W.* is simply inapposite on the record before us.

We sympathize with mother and laud her attempt to leverage an additional inpatient drug program just prior to the six-month hearing. However, mother's effort

comes too late. A parent may not “wait silently by until the final reunification review hearing to seek an extended reunification period based on a perceived inadequacy in the reunification services occurring long before that hearing. [Citation.]” (*Los Angeles County Dept. of Children etc. Services v. Superior Court* (1997) 60 Cal.App.4th 1088, 1093.) “The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances.” (*In re Misako R., supra*, 2 Cal.App.4th at p. 547.) Here, mother was offered reasonable services but failed to take advantage of the resources afforded her or timely request additional assistance.

In sum, the record supports the juvenile court’s determination that the services offered and provided to parents were reasonable—no more was required.

B. Services should not have been extended.

Mother also contends that reunification services should have been extended an additional six months because she made substantive progress in completing the Bureau’s case plan at the six-month juncture.

“For a child under three years of age at the time of removal, . . . reunification services are presumptively limited to six months.” (*Tonya M. v. Superior Court* (2007) 42 Cal.4th 836, 843.) To terminate those services at the six-month review hearing, the Bureau must prove that it offered or provided reasonable services and then show by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in the court-ordered treatment plan. (§ 366.21, subs. (e)(1), (e)(3).) Conversely, to extend services, the court must find either that there is a substantial probability the child may be returned to his parents within six months or that parents were not provided reasonable services. (*M.V. v. Superior Court* (2008) 167 Cal.App.4th 166, 175; § 366.21, subd. (e)(3)).

Here, the Bureau removed J.J. from mother’s care because she tested positive for cocaine and marijuana at J.J.’s birth. Upon J.J.’s removal, and as discussed above, the Bureau provided mother with reasonable services, including substance abuse treatment and counseling to assist mother in reunifying with J.J. Mother’s substance abuse

treatment included inpatient treatment, outpatient treatment, and regular drug testing. Mother initially complied with the case plan, completing an inpatient treatment program. Unfortunately, mother made no further progress in addressing her substance abuse issues after she was removed from an outpatient substance abuse treatment program for fighting with another outpatient. Thereafter, mother failed to submit to any further drug testing, having been initially advised that each missed test is considered positive. In addition, mother regressed from unsupervised to supervised visits with J.J. and would often not show for visits. Mother even failed to maintain contact with the Bureau for several months and was located only through the efforts of the Bureau. On this record, we agree with the juvenile court's conclusion that given mother's lack of progress, it was unlikely that J.J. could safely be returned to mother with an additional six months of services.

Last, mother claims that her attempt to re-enroll in treatment services days before the status hearing along with her completion of an inpatient treatment program amount to substantive progress. We disagree. As the juvenile court stated in denying mother additional services, mother "really started out working very hard . . . , things really did unravel," and J.J. "came before [the] [c]ourt specifically related to issues of substance abuse"; mother's decision to abort the services offered by the Bureau and her failure to test indicate a possible complete regression from her inpatient treatment. We therefore conclude that the trial court did not err when it denied mother's request to extend reunification services an additional six months.

Father's Claim

C. Substantial evidence supports the court's finding of no probability of return to father.

Father contends the record did not support the court's finding at the six-month dispositional hearing that he "did not participate regularly / make [*sic*] sufficient progress in services and that there was no substantial probability J.J. could be returned home if services were extended to [father]." We conclude the trial court did not err in making these findings.

The relevant law governing the issue before us is not in dispute. At the six-month dispositional hearing, “the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment.” (§ 366.21, subd. (e)(1).) “ ‘In evaluating detriment, the juvenile court must consider the extent to which the parent participated in reunification services. [Citations.] The court must also consider the efforts or progress the parent has made toward eliminating the conditions that led to the child’s out-of-home placement.’ ” (*In re E.D.* (2013) 217 Cal.App.4th 960, 966.) Failure to participate regularly and make substantive progress in a court-ordered treatment program is prima facie evidence that return of a child would be detrimental. (§ 366.21, subd. (e)(3).)

If a child was less than three years old when first removed from his parents and the court finds by clear and convincing evidence “that the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan,” the court may set a section 366.26 hearing to terminate a parent’s rights. (§ 366.21, subd. (e)(3).) However, if there is a substantial probability that the child may be returned to the parent within six months or that reasonable services were not provided, the matter shall be continued to the 12-month permanency hearing. (*Ibid.*) Compliance with a case plan alone does not guarantee return of a child to a parent’s custody. (*In re Jacob P.* (2007) 157 Cal.App.4th 819, 830.)

We review the juvenile court’s decision for substantial evidence. (*In re Amos L.* (1981) 124 Cal.App.3d 1031, 1036–1037.) Thus, we do not reweigh evidence or exercise independent judgment. (*Ibid.*) Our sole task is to determine if there are sufficient facts to support the juvenile court’s findings. (*Kevin R. v. Superior Court* (2010) 191 Cal.App.4th 676, 688–689.) We presume, in the absence of countervailing evidence, that returning a child to parental custody would create a substantial risk of detriment to the child if the parent failed to participate regularly in a court-mandated program. (*In re*

Heather B. (1992) 9 Cal.App.4th 535, 561.) The program must be tailored to the individual family's needs and designed to remedy the problem that led to the juvenile court's original jurisdictional finding. (*In re Taylor J.* (2014) 223 Cal.App.4th 1446, 1451.)

Here, J.J. was also removed from his father's custody because father used marijuana and had recently used cocaine. Father, however, failed to make any progress with that aspect of his case plan addressing his substance abuse. To his credit, father attended couples counseling and completed parenting classes; however, these components of his case plan fail to address the primary focus of the Bureau's plan: substance abuse. Indeed, father never acknowledged his substance abuse issues and only once reported for drug testing as his case plan required. The only drug test father submitted was positive for marijuana. Although father claimed he used marijuana to treat certain medical conditions, he never provided the Bureau with a medical marijuana card or other proof of medical need. And, as the juvenile court stated at the conclusion of the six-month hearing, drug abuse was the primary reason for J.J.'s removal and drug testing a crucial component of the case plan. Moreover, father's refusal to participate in testing also supports an inference that he was unlikely to take advantage of any services for drug treatment offered by the Bureau. Thus, we conclude that the court's findings were supported by substantial evidence.

DISPOSITION

The petitions for an extraordinary writ are denied on the merits. (§ 366.26, subd. (l); Cal. Rules of Court, rule 8.452(h)(1).) Our decision is final immediately. (Cal. Rules of Court, rules 8.452(i) & 8.490(b)(2)(A).)

Jenkins, J.

We concur:

Siggins, P. J.

Fujisaki, J.